UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT INC,

Defendant.

CASE NO. C18-1164 MJP

ORDER DENYING RULE 50 AND RULE 59 POST-TRIAL MOTIONS AND CONCLUDING PLAINTIFF'S ADA RETALIATION CLAIM IS MOOT

This matter comes before the Court on Plaintiff's Motion for Judgment as a Matter of Law and Equitable Relief (Dkt. No. 358) and Defendant's Motion for Judgment as a Matter of Law, or in the Alternative, a New Trial or Remittitur (Dkt. No. 350). Having reviewed the Motions, the Oppositions (Dkt. Nos. 374, 381), the Replies (Dkt. Nos. 385, 397), the Surreplies (Dkt. Nos. 390, 401), and all relevant portions of the record, the Court DENIES both Motions. The Court also finds and concludes that Plaintiff's ADA retaliation claim is MOOT.

BACKGROUND

After eight days of trial, an eight-person jury returned a verdict on November 16, 2020 in favor of Plaintiff David Goldstine's claims for: (1) disability discrimination in violation of the Washington Law Against Discrimination (WLAD); (2) retaliation in violation of WLAD: (3) disability discrimination in violation of the Americans with Disabilities Act (ADA); and (4) retaliation in violation of the ADA (an advisory verdict only). (See Dkt. No. 326.) The jury also agreed with Defendant FedEx Freight, Inc.'s affirmative defense that Goldstine failed to mitigate his damages. (Id.) The jury awarded Goldstine $129,278 for past economic losses, $272,465 for future economic losses, and $1,750,000 for emotional damages. (Id.) The jury also determined that Goldstine failed to mitigate his damages in the amount of $300,000. (Id.) And as to Goldstine's ADA discrimination claim, the jury awarded Goldstine $5,000,000 in punitive damages for acting with malice or reckless indifference. (Id.)

During trial, both Parties moved for judgment as a matter of law. (See Dkt. No. 308, 312, 317.) The Court denied both motions on the record in open court. The Parties now renew those motions and seek additional relief, as described and analyzed below.

ANALYSIS

A. Legal Standards

Under Rule 50 a party may renew a motion of for judgment as a matter law that was not granted by the Court. Such a motion should be granted only "if the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict." Pavao v. Pagay, 307 F.3d 915, 918 (9th Cir. 2002). "In considering a Rule 50(b)(3) motion for judgment as a matter of law, the district court must uphold the jury's award if there was any 'legally sufficient basis' to support it." Experience

Hendrix L.L.C. v. Hendrixlicensing.com Ltd, 762 F.3d 829, 842 (9th Cir. 2014) (quoting Costa v. Desert Palace, Inc., 299 F.3d 838, 859 (9th Cir. 2002)). "In making that determination, the district court considers all of the evidence in the record, drawing all reasonable inferences in favor of the nonmoving party" and "the court may not make any credibility determinations or reweigh the evidence." Id. (citing Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)).

Under Rule 59 "[t]he court may, on motion, grant a new trial on all or some of the issues . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1). "Rule 59 does not specify the grounds on which a motion for a new trial may be granted," so the Court is instead "bound by those grounds that have been historically recognized." Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1035 (9th Cir. 2003). "Historically recognized grounds include, but are not limited to, claims 'that the verdict is against the weight of the evidence, that the damages are excessive, or that, for other reasons, the trial was not fair to the party moving.'" Molski v. M.J. Cable, Inc., 481 F.3d 724, 729 (9th Cir. 2007) (quoting Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 251 (1940)). "The trial court may grant a new trial only if the verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice." Passantino v. Johnson & Johnson Consumer Prods., Inc., 212 F.3d 493, 510 n.15 (9th Cir. 2000). "Unlike with a Rule 50 determination, the district court, in considering a Rule 59 motion for new trial, is not required to view the trial evidence in the light most favorable to the verdict." Experience Hendrix, 762 F.3d at 842. "[T]he district court can weigh the evidence and assess the credibility of the witnesses" and "may sua sponte raise its own concerns about the damages verdict." Id. (citation omitted). "Ultimately, the district court can grant a new trial under Rule 59

on any ground necessary to prevent a miscarriage of justice." Id. (citing Murphy v. City of Long Beach, 914 F.2d 183, 187 (9th Cir. 1990)).

B. Plaintiff's Motion

Goldstine asks the Court to enter judgment as a matter of law in his favor and set aside the jury's determination that he failed to mitigate his damages. And for the first time in this case Goldstine asks the Court to enter an injunction against FedEx. Neither argument has merit.

1. The Evidence Supported the Jury's Mitigation Award

Goldstine argues that the evidence cannot support the jury's conclusion that he could have mitigated his damages by $300,000. The Court disagrees.

At trial, FedEx bore the burden of establishing that Goldstine was not reasonably diligent in seeking substantially equivalent employment and that with reasonable diligence he could have obtained such employment. Sangster v. United Air Lines, Inc., 633 F.2d 864, 868 (9th Cir. 1980), cert. denied, 451 U.S. 971 (1981). "[S]ubstantially equivalent" employment requires "virtually identical promotional opportunities, compensation, job responsibilities, working conditions, and status as Plaintiff's [former] position." Hughes v. Mayoral, 721 F. Supp. 2d 947, 968 (D. Haw. 2010). And FedEx bore the burden of demonstrating the existence of substantially equivalent jobs at the time Plaintiff was searching for employment. EEOC v. Farmer Bros. Co., 31 F.3d 891, 906 (9th Cir. 1994).

The jury heard testimony and saw documentary evidence that FedEx had offered Goldstine his job back by the end of July 2017. There was thus evidence of "substantially equivalent" employment. See Hughes, 721 F. Supp. 2d at 968. The jury also heard Goldstine's deposition testimony from April 2019 that he "probably" would have returned to FedEx had he known of the possibility. (See Dkt. No. 382 at 36.) While Goldstine qualified that remark, his

statement further supports the jury's determination that he could have returned to work at FedEx. And while Goldstine presented evidence and testimony that he did not want to return to FedEx, the jury was still entitled to conclude that he could have and that failing to do so was not reasonably diligent. See Sangster, 633 F.2d at 868. In addition, the jury was presented with a detailed table of damage calculations prepared by Dr. Christina Tapia from which it could have determined the exact amount of damages Goldstine could have mitigated. In light of the evidence presented at trial, the Court finds no basis to set aside the jury's determination as to the mitigation award.

Goldstine's contrary argument relies on assumptions about what the jury believed and how it calculated the mitigation amount. Goldstine first presumes that if the jury adopted Dr. Tapia's front and back pay analysis (which appears is likely), it should have also adopted Dr. Tapia's calculation of damages if it believed he should have returned to FedEx in July 2017. He then assumes that because the jury did not use that precise figure, it must have believed he should have found work outside of FedEx. Based on these assumptions, Goldstine then concludes that the jury's verdict is contrary to the evidence because FedEx failed to provide sufficient evidence of substantially equivalent jobs outside of FedEx. But Goldstine's string of speculations do not show that "the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict." Pavao, 307 F.3d at 918. That the jury did not adopt Dr. Tapia's specific figure does not show that the award was unsupported by the evidence. The jury was free to reach its own conclusion as to the specific amount based on the evidence before it. The Court rejects Goldstine's invitation to make unreasonable conclusions premised on speculation and innuendo. The Court DENIES the Motion as to this issue.

2. Goldstine's Request for an Injunction

More than two years after filing his lawsuit and a month after trial concluded, Goldstine now asks the Court to issue a broad injunction against FedEx as relief for his ADA retaliation claim as follows:

> FedEx Freight is directed to take affirmative steps to improve communication between its national Safety Department, the company's local management, and the DOT medical examiners who certify its drivers, to avoid future occurrences of disability discrimination when determining employee medical qualification under Federal Motor Carrier Safety Administration standards.

(Dkt. No. 358 at 12.) The Court finds no basis to grant this request.

A party seeking a permanent injunction must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). FedEx presents four valid arguments in opposition to this request.

First, FedEx argues that because Goldstine never pleaded a specific claim for injunctive relief he cannot do so for the first time through a post-trial motion. The Court agrees. See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015) ("When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not have the authority to issue an injunction."). While Goldstine's trial brief spoke of equitable remedies, he never mentioned an injunction. (Dkt. No. 281 at 12-13.) At best Goldstine's amended complaint included a catchall prayer "[f]or such other and further relief as the court deems just and equitable." (Second Am. Compl. Prayer for Relief E (Dkt. No. 17 at 14).) But the mere invocation of the Court's equitable powers hardly put FedEx on notice that he wanted any

injunction let alone the one he proposes. This is an independent basis on which the Court denies the request.

Second, FedEx argues that because Goldstine elected to pursue monetary rather than equitable relief, the Court should not award anything further. This follows the general principal that courts "equity will grant no relief where an adequate remedy at law exists." Mort v. United States, 86 F.3d 890, 892-93 (9th Cir. 1996) (citation and quotation omitted). Goldstine admits as much in his proposed findings of fact and conclusions of law, stating that he waived his right to have the Court invoke its equitable powers to award him front pay or reinstatement. (See Pl. Proposed Findings of Fact and Conclusions of Law (Dkt. No. 394 at 16) (citing Teutscher v. Woodson, 835 F.3d 936, 956 (9th Cir. 2016).) Given that Goldstine received substantial monetary relief, the Court cannot conclude that he did not obtain an adequate legal remedy for his injuries even considering the jury's mitigation award. See eBay, 547 U.S. at 391. This is another independent reason on which the Court denies the injunction.

Third, Goldstine has failed to identify what irreparable harm he faces without entry of the injunction or how the proposed injunction would redress any harm he has suffered. This alone justifies its denial. For the first time in his reply Goldstine argues that the "[h]arm from FXF's actions and denial of front pay is irreparable unless the Court reinstates the economic loss award or orders him reinstated." (Reply at 7 (Dkt. No. 397).) But this argument is flawed. First, Goldstine admitted he waived a right to seek an equitable remedy for front pay. (See Dkt. No. 394 at 16.) Second, Goldstine does not and cannot show how the proposed injunction would redress this purported "harm." Goldstine's failure to show irreparable harm is an independent basis to deny the injunction.

Fourth, Goldstine fails to identify any evidence he adduced at trial that might justify what appears to be a nationwide injunction. Though the Goldstine presented troubling evidence about misconduct, he nowhere developed or presented evidence of similar acts taken against anyone other than him that might justify the requested relief. And the proposed injunction fails to present a cogent and enforceable standard. As phrased, it would direct FedEx to "take affirmative steps to improve communication." This is both vague and unenforceable, and an independent basis on which the Court denies the injunction.

3. Request to Strike

FedEx's surreply asks the Court to strike certain "misstatements of law and new arguments not contained in his original motion." (Dkt. No. 401 at 1.) FedEx's request to strike "misstatements of law" is simply an attempt to provide further responsive briefing. This is not proper or permitted under the Local Rules. But the Court agrees with FedEx that Goldstine's request for further discovery and briefing was improperly raised for the first time on reply. And, on its merit, Goldstine is not entitled to further discovery on an issue he failed to raise at any point before the conclusion of trial. The Court STRIKES this argument/request and has not considered it.

4. Attorneys' Fees

Goldstine asks the Court to award him nearly $24,000 in attorneys' fees for bringing the motion. The Court may award fees to the prevailing party "only for work related to issues on which they prevail." Lambert v. Ackerley, 180 F.3d 997, 1012 (9th Cir. 1999). The Court declines to award fees for this Motion. The Motion failed to advance a tenable argument that might support entry of judgment as a matter of law or issuance of an injunction. The hours spent

drafting the motion were not reasonably spent and Goldstine did not prevail on this issue. The Court DENIES the request.

C. ADA Retaliation Claim

Pending before the Court is Goldstine's equitable ADA retaliation claim. The Court makes the following ruling having held an 8-day trial, and having reviewed Plaintiff's Motion for Judgment as a Matter of Law, Goldstine's Supplemental Trial Brief, and Goldstine's Proposed Findings of Fact and Conclusions of Law. Because Goldstine does not seek any equitable relief that the Court can or should grant there is no longer a present controversy for which effective relief can be granted and the Court finds Goldstine's ADA retaliation claim MOOT. See Bayer v. Neiman Marcus Grp., Inc., 861 F.3d 853, 862 (9th Cir. 2017) ("The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." (citation and quotation omitted)).

Under the ADA, the Court has broad equitable powers, which include "reinstatement or hiring of employees, with or without back pay," and "any other equitable relief as the court deems appropriate." 42 U.S.C. § 12117(a); 42 U.S.C. § 2000e-5(g)(1). Goldstine has failed to identify any equitable remedy to which he is entitled, particularly in light of the jury's award.

First, Goldstine admits he abandoned any right to reinstatement or front pay by submitting his damages requests to the jury. In his proposed findings of fact and conclusions of law, Goldstine states:

> In this case, all liability and damages issues were decided by the jury, including front pay, which precludes front pay as an equitable remedy. Teutscher v. Woodson, 835 F.3d 936, 956 (9th Cir. 2016) (Plaintiff "waived his right to a reinstatement award when he affirmatively elected to seek front pay from the jury.").

(Dkt. No. 394 at 16.) Having submitted his request to the jury to determine back and front pay, Goldstine waived any right to reinstatement. See Teutscher, 835 F.3d at 955-56. Nor has Plaintiff

identified any exception to this rule where the jury's mitigation award may have the practical effect of diminishing some amount of the front pay. And Goldstine's suggestion that the Court use its equitable power to set aside the mitigation award would run contrary to the instruction of Teutscher that the Court's equitable powers do not give the plaintiff "a second bite at the apple by seeking a duplicative reinstatement award from the court." Id. at 956.

Second, Goldstine fails to persuade the Court that there is any valid injunctive relief to which he is entitled. As explained in Section B(2), this request fails for multiple reasons. Nor has Goldstine convinced the Court that his request for "injunctive relief directing FXF to take affirmative steps to avoid future occurrences of disability discrimination" is appropriate. (Dkt. No. 358 at 2.) Goldstine, who is not employed by FedEx, has not showed what irreparable harm he faces without entry of this injunction. See eBay, 547 U.S. at 391. The Court finds no basis on which to enter an injunction in Goldstine's favor, particularly in light of the substantial monetary award Goldstine received from the jury's verdict.

Third, the Court is not convinced by Goldstine's boilerplate argument that it should award "further equitable relief under the ADA to secure complete justice." (Dkt. No. 394 at 16.) Goldstine does not identify what specific relief this is, and the Court has not sua sponte identified any such relief.

The Court finds that there is no equitable relief to which Goldstine is entitled given his own litigation choices and the jury's significant monetary award. The Court further finds that there no longer exists a present controversy between the parties as to which equitable relief can or should be granted and finds the ADA retaliation claim MOOT. See Bayer, 861 F.3d at 862. This constitutes the Court's findings of fact and conclusions of law on this claim, as required by Rule 52(a)(1).

D. FedEx's Motion

FedEx's Motion raises five distinct issues. First, FedEx renews its Motion for Judgment as a Matter of Law. Second, FedEx seeks remittitur of the jury's noneconomic and punitive damages award. Third, FedEx asks for a new trial based on what it believes were improper jury instructions. Fourth, FedEx also seeks a new trial because of allegedly improper evidentiary rulings. Fifth, FedEx renews its objections to the remote jury trial. The Court finds no merit to any of these arguments.

1. Renewed Motion for Judgment as a Matter of Law

FedEx seeks judgment as a matter of law on four issues. First, FedEx argues that Goldstine failed to provide evidence that he was disabled, perceived/regarded as disabled, and/or had a record of disability. Second, FedEx contends that Goldstine has not shown FedEx discriminated against him by decertifying him or refusing to reinstate him. Third, FedEx contends that Goldstine failed to show "but for" causation. Fourth, FedEx argues that the evidence was insufficient to allow the jury to consider punitive damages.

a. Goldstine's disability, the perception, and/or record thereof

FedEx argues that Goldstine failed to provide evidence he is disabled, was regarded/perceived as disabled or had a record of disability. The Court disagrees.

Under the WLAD "disability" is defined as "a sensory, mental, or physical impairment that: (i) [i]s medically cognizable or diagnosable; or (ii) [e]xists as a record or history; or (iii) [i]s perceived to exist whether or not it exists in fact." RCW 49.60.040(7)(a). "A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter." RCW 49.60.040(7)(b).

Under the ADA, a "disability" is defined as: (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. §12102(2). An individual has a record of a disability if the individual has "a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities." 29 C.F.R. § 1630.2(k). An individual is "regarded as" having a disability if he establishes that he has been discriminated against "because of an actual or perceived impairment whether or not the impairment limits or is perceived to limit a major life activity." 42 U.S.C. § 12102(3)(A). And while a plaintiff cannot be "regarded as" having a disability if the actual or perceived impairment is "transitory and minor"—i.e., six months or less—42 U.S.C. § 12102(3)(B), this exception is an affirmative defense for which the employer bears the burden proof. Nunies v. HIE Holdings, Inc., 908 F.3d 428, 435 (9th Cir. 2018).

Relying solely on testimony from PA-C Jon Feldheger, FedEx argues that because Goldstine had a "full range of motion" during an examination he was not disabled. (Def. Mot. at 2 (Dkt. No. 350 at 3).) But as Goldstine points out, there was evidence that he was disabled based on the prior injury to his knee and the post-surgery limitations on the use of his knee, including a limited range of motion. And while Feldheger found full range of motion at one visit, the jury heard other evidence about limitations on Goldstine's range of motion, suggesting that the limitations could have been episodic. The Court finds sufficient evidence for the jury to have found Goldstine disabled under the ADA.

Even if the record did not support such a finding, Goldstine provided ample evidence and testimony that FedEx perceived/regarded him as disabled. The entire genesis of his decertification was the belief that he was not able to perform his work due to his knee

limitations. For example, in an April 11, 2017 email that led to Goldstine's decertification, Field Safety Advisor Ted Carlson wrote: "Driver states he has a disability and can't open or close trailer doors." There was further evidence presented at trial that FedEx believed Goldstine was disabled even though Goldstine maintained that he could perform the job. This evidence is also sufficient to support a determination that Goldstine had a record of being disabled and was being misclassified. No grounds justify entry of judgment as a matter of law for FedEx.

b. Reasons for decertification and refusal to recertify

FedEx retreads its argument that Goldstine was decertified purely for safety reasons and that his disability or the perception thereof was not a substantial factor in or the "but for" cause of the decision to decertify him. (Def. Mot. at 5 (Dkt. No. 308).) This argument did not persuade the jury, which heard substantial testimony about Goldstine's decertification resulting from FedEx's belief that he was disabled or his actual disability. The jury also heard evidence suggesting that FedEx rejected his April 13, 2017 DOT certification because he had not adequately disclosed what FedEx believed was a disability. FedEx has not shown any valid grounds to overturn the jury's verdict on this issue.

FedEx also claims that Tammy Rogers, a Safety Advisor, decertified Goldstine purely for safety reasons and was not influenced by anyone else at FedEx. But as FedEx's Motion admits, Rogers acted on Carlson's email describing Goldstine as being disabled, which itself was based on information Carlson obtained from Goldstine's manager, Dave Appesland, through Christy Tayman, the Employee Relations Advisor (i.e., human resources). (Def. Mot. at 5 (Dkt. No. 350); see also Dkt. No. 308 at 2.) Rogers' actions were based on the perception that Goldstine was incapable of doing the job fully due to a disability. The jury heard testimony that Carlson acted on information from Goldstine's direct manager, Dave Appesland, who perceived

Goldstine as disabled and felt "legally threatened" by Goldstine when he complained about the trailer door incident as related to a disability. There was evidence to support the jury's determination that Rogers' decision was based on a retaliatory animus directed at Goldstine for refusing to drive a truck with a broken trailer door due to his knee limitation or the perception that he was disabled. And there was evidence that Tayman failed to relay pertinent information to Rogers to inform her decision about returning Goldstine to work. FedEx was allowed to present its view that all acts were undertaken for safety reasons, but the jury was not convinced. There is no basis to set aside the jury's determination.

c. Causation

FedEx argues that because Goldstine failed to disclose his knee limitations on the April 13, 2017 DOT certification, Rogers' rejection of the certification was necessary and required by Federal Motor Carrier Safety Administration regulations. This argument tries yet again to interject a business necessity defense that FedEx failed to plead. FedEx's renewed effort is not well taken. Moreover, the jury heard evidence that Goldstine was decertified because of Roger's perception that he was disabled—a perception based on statements from Goldstine's manager and others in the chain of communication that built up this perception. The jury also heard testimony from Dr. Hoffman and Feldheger that the April certification was valid and that Goldstine was capable of working safely. The jury's verdict on this issue is not contrary to the evidence. FedEx also argues that because Goldstine was offered the job back on July 25, 2017 "it was Goldstine's conduct, not FXF's, that ended his employment." (Mot. at 6 (Dkt. No. 350 at 7).) The jury heard ample evidence to the contrary. And even though it determined that Goldstine should have mitigated his damages, that does not lead to the conclusion that there was an

absence of causation between the discrimination and Goldstine's termination. If that were true, it would not have awarded him any damages. The Court finds no basis to set aside the verdict.

d. Punitive damages

FedEx argues that punitive damages were not warranted because there was an absence of malice or reckless indifference to Goldstine's federally-protected rights. (Def. Mot. at 6 (Dkt. No. 350 at 8).) FedEx claims Plaintiff "submitted no proof that FXF intentionally 'engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual' as he must do in order to recover punitive damages under the ADA." (Id. at 9 (citing 42 U.S.C. § 1981a(a)(2), (b)(1); Kolstad v. Am. Dental Ass'n, 527 U.S. 526, 535 (1999).) The Court disagrees.

Punitive damages "apply in intentional discrimination cases where the plaintiff can show that the employer knowingly or recklessly acted in violation of federal law." Hemmings v. Tidyman's, Inc., 285 F.3d 1174, 1197 (9th Cir. 2002) (citing Kolstad, 527 U.S. at 535). "[I]n general, intentional discrimination is enough to establish punitive damages liability." Passantino, 212 F.3d at 515. "[M]alice and reckless indifference are subjective questions concerning the employer's motive or intent, rather than an objective inquiry into whether the employer's behavior is 'egregious.'" Hemmings, 285 F.3d at 1197 (quoting Kolstad, 527 U.S. at 535-38). "The defendant is appropriately subject to punitive damages if it acts 'in the face of a perceived risk that its actions will violate federal law.'" Hemmings, 285 F.3d at 1197 (quoting Kolstad, 527 U.S. at 536). And "the plaintiff must show that the intentional discrimination by an employee is attributable to the employer by using traditional agency principles, e.g., that a managerial employee acted within the scope of his or her employment." Id. (citing Kolstad, 527 U.S. at 540-

41). But "a sufficiently senior agent may be treated as the corporation's proxy." Id. at 1198 (citing Passantino, 212 F.3d at 516).

FedEx fails to show any basis to set aside the jury's punitive damages award. First, there was evidence that FedEx acted in the face of a perceived risk that its actions would violate federal law. See Hemmings, 285 F.3d at 1197. Goldstine testified that FedEx used his refusal to close a broken trailer door—an act the jury could have found outside of his job duties—to discriminate against him on account of a perceived disability. The jury heard evidence that FedEx has an anti-discrimination policy that require investigation of claims of disability and that instead of following it, FedEx decertified Goldstine from driving because of a perceived disability. FedEx also accused Goldstine of falsifying the DOT certification application by not disclosing a knee limitation that FedEx perceived to be a disability, but which Goldstine explained did not impact his ability to work. The jury heard evidence of an animus directed at him by his manager, Appesland, who also testified that he felt legally threatened by Goldstine. From this, the jury could have concluded he was aware that the decertification could violate Goldstine's rights. And the jury heard evidence that Rogers' based her decision to decertify Goldstine on the perception of his disability and the animus against him held by many others at FedEx, including, but not limited to Appesland, Tayman, and Mott. The jury also heard testimony that after Goldstine filed his charges of discrimination with the State, Tayman was simply counting the days that needed to elapse before she could fire him. This non-exhaustive list of evidence shows that the jury was entitled to consider and conclude that FedEx intentionally discriminated against Goldstine.

There was also sufficient evidence that the discriminatory actions were attributable to FedEx through traditional principals of agency. FedEx argues that Appesland was the only

managerial person and he was merely following safety protocols. But the jury heard contrary evidence showing Appesland's animus and his role in the process of Goldstine being decertified on account of a perceived or actual disability. And Rogers acted on Appesland's observations and animus, which was communicated to her through Tayman via Carlson. And Rogers herself was sufficiently senior to be treated as FedEx's proxy relative to Goldstine—her decision precluded Goldstine from working. See Passantino, 212 F.3d at 516. And as the HR employee with broad oversight duties, Tayman was also sufficiently senior to be treated as FedEx's proxy as to Goldstine when selectively shared or refused to share information with Rogers about Goldstine. See id. The fact that FedEx compartmentalizes managerial functions does not convince the Court that only Appesland's acts are attributable to FedEx—though they alone are sufficient to support the punitive damage award. The Court finds no error in permitting the jury's decision to award punitive damages.

2. Emotional Damages Remittitur

FedEx asks for remittitur or a new trial on the jury's $1.75 million emotional damage award. FedEx argues that the award is unsupportable because Goldstine's emotional damages were "relatively minor" and "occurred over a short time (three months)" and that Goldstine's cancer diagnosis improperly incited the jury's passion and prejudice against FedEx. (Def. Mot. at 12 (Dkt. No. 350).) FedEx asks for a new trial or for remittitur to $200,000, which it claims accords with the outcome in a case with a similar "garden variety" emotional damages claim. (Id. (citing Johnson v. Albertsons LLC, No. 2:18-01678-RAJ, 2020 U.S. Dist. LEXIS 117070, at *13 (W.D. Wash. July 2, 2020) (remitting non-economic damages award from $750,000 to $200,000 where emotional harm from retaliation was based on "meager evidence" over a 2-year period)).)

The Court reviews a "jury verdict of compensatory damages for substantial evidence," and "will not disturb an award of damages unless it is clearly unsupported by the evidence." In re Exxon Valdez, 270 F.3d 1215, 1247–48 (9th Cir. 2001) (quotation and citation omitted). The Court must "afford substantial deference to a jury's finding of the appropriate amount of damages," and "uphold the jury's findings unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork." Id. (citation and quotation omitted). Substantial emotional distress damages awards need not be supported by "objective" evidence and subjective testimony of the plaintiff, corroborated by others (including relatives), may be sufficient. See Passantino, 212 F.3d at 513–14 (noting that case law, including Washington State cases, does not require emotional distress damages awards to be supported by "objective" evidence); see Bunch v. King Cty. Dep't of Youth Servs., 155 Wn.2d 165, 181 (2005); see also Zhang, 339 F.3d a1040 (9th Cir. 2003) (in § 1981 case, stating that plaintiff's "testimony alone is enough to substantiate the jury's award of emotional distress damages," which court estimated could be more than $200,000). Subjective testimony of the plaintiff, corroborated by others (including relatives), may be sufficient. See Passantino, 212 F.3d at 513–14. "When the court, after viewing the evidence concerning damages in a light most favorable to the prevailing party, determines that the damages award is excessive," it may either grant a new trial or deny the motion if the prevailing party accepts "a reduced amount of damage which the court considers justified." Seymour v. Summa Vista Cinema, Inc., 809 F.2d 1385, 1387 (9th Cir.), amended, 817 F.2d 609 (9th Cir. 1987) (quotation omitted). But "[t]he fact that a jury may have been outraged by the defendant's conduct to the point of awarding excessive damages does not prove that its decision on liability was flawed." Id.

Though the jury's noneconomic damage award was large, the jury heard evidence of Goldstine's emotional distress when he faced a cancer diagnosis without an insurance and with sufficient funds for surgery. Goldstine testified that it was the "[s]cariest damn thing I've ever encountered." And he described the fear he could not afford the necessary surgery and the shame he felt when he had to rely on friends and family to pay the medical bills. Goldstine's testimony was supported by his friend, Dennis Raymond, who detailed his friend's emotional plight. This evidence together was persuasive and supports the award. And the jury also heard evidence sufficient to support a causal link between FedEx's discriminatory conduct and Goldstine's peril of not having health benefits when diagnosed with cancer. The jury's award was also based on the testimony provided about Goldstine's distress during the three months when he was "stood down." Goldstine testified that he was hopeless and confused and began to withdraw. His friend, Raymond, said that Goldstine was "hurt" and "outraged" and was "victimized" by the claims of dishonesty. There was no evidence that Goldstine lost sleep, had anxiety, or sought medical treatment for any emotional condition. But the jury heard sufficient evidence of Goldstine's emotional distress caused by FedEx's discriminatory acts that would make remittitur or a new trial improper. It cannot be said that the award "is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork." In re Exxon Valdez, 270 F.3d at 1247–48.

FedEx argues that there is no causal link between Goldstine's termination and the cancer diagnosis because, as the mitigation award suggests, Goldstine could have returned to work at FedEx. This, it argues, confirms that the jury acted solely out of passion and prejudice. (Def. Mot at 10 (Dkt. No 350 at 11).) But the mere fact that Goldstine could have returned at some point in time to FedEx does not mean that causation is absent. And from the jury's mitigation award the

Court cannot conclude the jury believed Goldstine should have returned to FedEx before the cancer diagnosis. FedEx also argues that the parties stipulated to the lack of causal connection between the 2019 cancer diagnosis and FedEx's conduct in 2017. But the stipulated fact only states that "FedEx Freight did nothing to cause or exacerbate any medical condition of Mr. Goldstine." (Fourth Amended Pretrial Order, Admitted Fact 7 (Dkt. No. 296).) Goldstine does not argue that FedEx caused his cancer or a medical condition. Nor does the Court construe Goldstine's emotional suffering to constitute a "medical condition," particularly since Goldstine sought no medical treatment for his emotional distress. The jury was entitled to consider all of the evidence of Goldstine's emotional suffering presented at trial and the Court does not find a failure of proof of causation.

3. Punitive Damages Remittitur

FedEx also requests "[a]s an alternative" that the Court remit the punitive damages to $0. (See Def. Mot. at 12 lines 9-11 (Dkt. No. 350).) FedEx does not justify this request.

In assessing the reasonableness of a punitive damage award, the Supreme Court "established three 'guideposts' for courts to use in determining whether a punitive damage award is grossly excessive: (1) the reprehensibility of the defendant's conduct; (2) the ratio of the award to the harm inflicted on the plaintiff; and (3) the difference between the award and the civil or criminal penalties in comparable cases." In re Exxon Valdez, 270 F.3d at 1240 (citing BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575-83 (1996)).

FedEx cites to no law supporting its request and provides no argument as to why the punitive award was excessive. The Court rejects this unsupported argument.

4. Improper Jury Instructions

FedEx renews its objections to certain jury instructions, which the Court again rejects.

First, in support of its argument, FedEx cites to and incorporates "[t]he reasons set forth in Dkt. 315." (Def. Mot. at 11 (Dkt. No. 350 at 12).) But Docket Entry 315 is Goldstine's Opposition to FedEx's Motion for Directed Verdict and contains no arguments to support FedEx's motion. The Court is therefore without any arguments to consider or cause to reconsider any jury instructions through this errant citation.

Second, FedEx takes issue with the Court's instruction allowing the jury to consider Goldstine's impairment with the benefit of mitigating measures like a prosthesis because "Plaintiff's claimed disability is the limited range of motion caused by his total knee replacement." (Dkt. No. 350 at 12.) But the knee replacement implanted a new joint, which otherwise mitigated Goldstine's more serious knee injury. This was an appropriate instruction. Even if it was not, FedEx fails to explain how this impacted the trial or how it confused the jury, particularly since there was abundant evidence presented that FedEx perceived Goldstine as disabled and had a record of his disability. The Court finds no merit in this argument.

Lastly, FedEx takes issue with the Court's decision to allow a punitive damage instruction. But the Court rejects this argument for the same reasons explained above.

5. New Trial Due to Evidentiary Rulings

FedEx claims the Court erred in making rulings on motions in limine "E, 1, 5, 9 & 10" and a new trial should be held. (Dkt. No. 350 at 13.) The Court remains unconvinced.

FedEx renews its request to exclude testimony about Goldstine's cancer diagnosis. (See Motion in Limine E and Supplemental Motion in Limine 1.) FedEx argues that the testimony was subject to exclusion under Rules 401, 402, 403, 702, and 802 because it had no probative value and, even if it did, it was far outweighed by its prejudicial nature—as evidenced in the large emotion damages award. (Def. Mot. at 13 (Dkt. No. 350).) The Court disagrees.

Goldstine's cancer diagnosis was relevant to the claimed damages, including the emotional distress. Goldstine was entitled to present to the jury evidence that after being discriminated against he found himself facing a cancer diagnosis without insurance or sufficient money for treatment. While the cancer was not caused by FedEx, the lack of insurance was fairly traceable to its discriminatory conduct. The Court rejects FedEx's argument.

FedEx renews three other motions in limine, all of which the Court rejects. First, it argues the jury should not have seen evidence of Goldstine's knee scars. But the knee scars were relevant to the issue of whether Goldstine was disabled and the Court limited Goldstine to showing a photo of the scar, rather than revealing it live to the jury. It was not prejudicial to allow the jury to see this picture. Second, FedEx renews its request to exclude Dr. Hoffman's expert opinion because it is based on hearsay. As the Court explained to the parties, "experts are entitled to rely on hearsay in forming their opinions." Carson Harbor Village, Ltd. v. Unocal Corp., 270 F.3d 863, 873 (9th Cir. 2001); see Fed. R. Evid. 703. Third, FedEx renews its request to exclude Feldheger's opinion that Goldstine was qualified to return to work. There are no grounds to undo that ruling, as Feldheger's opinion was based on his observation and experience.

6. Remote Trial Violates Constitutional Rights

FedEx argues that the remote jury trial violated the Seventh Amendment and Rule 43(a), as well as General Order No. 15-20. The argument is legally and factually untenable.

Both Rule 77(b) and 43(a) permit the Court to convene a jury trial by contemporaneous video conferencing technology. See Liu v State Farm Mut. Auto. Ins. Co., No. 18-1862-BJR, Dkt. No. 83 (W.D. Wash. Dec. 17, 2020); Gould Elecs. Inc. v. Livingston Cty. Rd. Comm'n, 470 F. Supp. 3d 735, 738 (E.D. Mich. 2020). First, Rule 77(b) provides that "[e]very trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom."

(emphasis added). This admonishment permits a flexible definition of open court. Trials may be conducted in a non-traditional manner when "exigencies make traditional procedures impracticable." Gould, 470 F. Supp. 3d at 738. In times of crises, like hurricanes and floods, courts have adapted and held court in unusual places. Second, Rule 43(a) provides that "[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." Like Rule 77(b), Rule 43(a) affords flexibility when circumstances dictate something other than in-court proceedings.

The Court enjoys broad discretion to determine whether good cause and compelling circumstances exist under Rules 77(b) and 43(a) to conduct remote civil jury trials. Thomas v. Anderson, 912 F.3d 971, 977 (7th Cir. 2018) ("[U]nder Rule 43(a), the judge has discretion to allow live testimony by video for 'good cause in compelling circumstances and with appropriate safeguards.'") cert. denied 140 S.Ct. 533 (2019); see also Gould, 470 F. Supp. 3d at 740 ("Determining whether good cause and compelling circumstances exist is a matter left to the court's discretion."). "The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place." Fed. R. Civ. P. 43(a) advisory committee's note to 1996 amendment.

Good cause and compelling circumstances existed to conduct the jury trial remotely through the Court's video conferencing platform—Zoom.Gov. The reasons were multifactorial. On February 29, 2020 Governor Jay Inslee declared a state of emergency in Washington in response to the COVID-19 pandemic. See Proclamation of the Governor No. 20-05 (Feb. 29 2020). Shortly after, the Court issued General Order No. 01-20, continuing all civil and criminal

in-person matters "[g]iven the significant number of identified and projected cases of COVID-19 in this District and the severity of risk posed to the public. . . ." General Order No. 01-20 at 2. By late Fall 2020, the COVID-19 pandemic continued to disrupt the normal operation of the Court and quotidian routines throughout Washington. And on October 2, 2020, the Court issued General Order No. 15-20—in effect at the start of the trial—which stated, in part:

> In the last two months, the daily number of positive cases, hospitalizations, and deaths have significantly decreased in the Western District of Washington. This, combined with the deployment of Courthouse procedures designed to reduce the spread of COVID-19, now allows for a limited number of individuals to safely enter these facilities for critical in-person criminal proceedings. However, limiting the size and frequency of gatherings remain critical to preventing serious injury and death from COVID-19.

General Order No. 15-20 at 1. The General Order continued the restriction on in-person criminal and civil matters, but stated that "Remote video proceedings are permitted in civil cases, including jury trials with jurors participating remotely." Id. at 2. This Order applied at the time of this trial. Additionally, the Court's public elevators were out of service at the time of trial, making the Court's 14th floor courtroom inaccessible to some and impractical for everyone. To put it mildly, exigencies existed requiring nontraditional methods of conducting the trial.

The Court went to lengths to provide adequate safeguards so that the parties to the remote jury trial received a fair trial. Well before this trial, the Court convened a committee to study the potential of using the Zoom.Gov platform to conduct remote civil jury trials during the COVID-19 pandemic. The Court's Committee studied the practical and technical safeguards that could be put in place to provide a fair proceeding to litigants. The Committee also worked to ensure that jurors who lacked access to technology, training, or the internet could participate. After gathering data and conducting a mock remote civil jury trial, the Committee issued a detailed set of procedures for both Court staff and participating attorneys to follow. A copy of the handbook issued for attorneys that was in effect at the time of the trial is appended to this Order as

Appendix A. The Court also issued an order in this case setting the standards for the remote jury trial, including as to witness and exhibit preparation and the conduct of counsel. (See Order for Remote/Virtual Civil Jury Trial (Dkt. No. 284).) And the Court discussed the remote trial process at length with counsel during several pretrial conferences. (See Dkt. No. 267, 283, 293.)

The remote jury trial process implemented in this District works effectively to reproduce the core components of a civil trial. The Zoom.Gov platform permits the instantaneous transmission of live video testimony to all parties and jurors. It allows the parties to pose questions to witnesses and interpose objections. It also allows the Court to make rulings on objections, hold side bars, and excuse the jury to deliberate in a "virtual" jury room where jurors can each view admitted exhibits on their own device. The platform also enables jurors to ask questions of the witnesses, which helps should whether the jurors are paying attention to the proceedings. During this trial, the Court employed two courtroom deputies to monitor the proceedings and juror attention. Jurors and the Court are able to assess witness demeanor and credibility in much the same way as happens in open Court—with the added benefit of seeing faces head-on.

To convene a jury for this case, the Court summoned 100 potential jurors, 31 of whom participated in voir dire. As part of the juror orientation and prior to voir dire, the Court required the jurors to complete a questionnaire that the parties prepared. And to accommodate requests from counsel, the Court conducted two rounds of voir dire so that counsel could view all jurors on a single computer monitor. After these voir dire rounds and allowing the parties to make for-cause and peremptory challenges, the Court empaneled 8 jurors. The Court then read the preliminary jury instructions and the eight-day trial commenced. The parties put on 14 live witnesses who appeared on screen without masks and whose facial expressions and demeanor

could be readily discerned. All eight jurors participated in the eight-day trial. While there were issues with internet connectivity impacting jurors and both parties, the Court found the delays were not undue when compared to typical delays inherent in in-person trials. The Court and its two courtroom deputies monitored the jurors to ensure they were paying attention. The jury showed its attention by asking pertinent and detailed questions of each witness. And while the jurors were appearing remotely from their homes, the Court found that the jurors took their role seriously and none showed signs of distraction. After the parties' closing arguments, the Court read the final set of instructions to the jury and sent them to the virtual jury room to deliberate where each juror had unfettered access to review the admitted exhibits. After more than a full day of deliberations, the jury returned its verdict. The Court polled each juror and confirmed the verdict was that of each juror.

FedEx's motion fails to demonstrate how the remote civil jury trial violated the Seventh Amendment, Rule 43 or General Order No. 15-20. As demonstrated above, the process provided all of the necessary safeguards under the Seventh Amendment and Rule 43. And it abided by General Order No. 15-20's explicit permission to hold remote civil jury trials. See General Order No. 15-20 at 2. FedEx's opening motion fails to provide any evidence to supports the arguments presented and the Court finds it unconvincing. In its reply, FedEx offered a lengthy declaration from one of its three trial attorneys, Medora Marisseau. Though the declaration could be stricken because it should have been filed with the opening brief, the Court considers and responds to it.

First, counsel complains that she was unable to communicate with her client during the trial because they were physically separated. (Marisseau Decl. ¶ 5 (Dkt. No. 387).) But this "problem" was of counsel's own creation. Nothing in the Court's pretrial orders required counsel and client to be in separate rooms. The remote jury trial handbook advised counsel that

"Witnesses, counsel, and parties should be in locations that are suitable for trial." Handbook at 4. The handbook specifically stated:

> Counsel should confer regarding the following issues and advise the Court of any agreements or issues to be resolved:
> - The equities for witness and counsel participation in the Zoom trial, including whether:
>   - the part(ies) may be in the same physical space as their counsel.

Handbook at 4. Neither before nor during trial did Counsel raise any concern about being unable to be in the same location as her client, despite this admonition. And throughout the trial, FedEx's representative appeared to be in the same room as one of the trial team attorneys. Had it been important to share the same room, counsel should have made arrangements to accommodate her own preferences. At the very least, counsel should have raised the concern with the Court before or during trial rather through a post-trial declaration.

Second, counsel claims she could not effectively communicate with jurors and witnesses because she could not read their reactions and because she could not focus on witnesses and the jury at the same time. (Marisseau Decl. ¶ 6.) The Court is unconvinced. First, the technology used allowed counsel to create her own rapport with jurors and witnesses in much the same way as occurs in person. The Court found engaging with jurors and witnesses straightforward and gauging reactions and demeanor easy. Second, Counsel's statement overlooks the fact that in an in-person trial, counsel would not be able to simultaneously focus on a witness and the jurors any more effectively than she could on Zoom.Gov. In both settings, counsel must shift focus between the witnesses and the jury. And in the courtroom, the faces of witnesses and jurors will be far smaller than they appear on Zoom.Gov. Moreover, had the Court been able to conduct the trial in-person, witnesses and jurors would have most likely been wearing masks, making assessments of demeanor far more difficult than on Zoom.Gov where they were mask-less.

Third, counsel claims "[t]he technology also limited my ability to assert objections" because her objection was not heard due to a "built-in delay" or because she was muted. (Marisseau Decl. ¶ 8.) This contention borders on frivolous. Counsel was fairly presented with every opportunity to make her objections on the record. If counsel had muted her own microphone or did not hear her objection go through due to her claim of "built-in delay," then she should have made every effort to put her objection on the record even if it came mid-answer or interrupted the questioning. Indeed, the Court's Order on the Remote Trial specified that counsel should also raise her hand to make objections. (See Dkt. No. 284 at 6.) If counsel's objections do not appear in the record, their absence is fairly attributable to counsel's failure to act and cannot be blamed on the technology.

Fourth, counsel claims that her opposing counsel used objectionable demonstratives and that the record does not show their use because the proceedings were not "videotaped." (Marisseau Decl. ¶¶ 9-10.) The argument lacks merit. First, in-person civil trials are not recorded in this District, meaning that there would similarly be no audio/visual record. Second, counsel did, in fact, make objections to the use of demonstratives, many of which the Court sustained. Third, just as would be the case in an in-person trial, it is up to counsel to make objections as to non-verbal conduct on the record. Counsel's failure to make a complete record cannot properly be attributed to the remote nature of the proceedings. And counsel's complaints about a sketch used in closing fails to acknowledge that counsel made no objection to it during the argument. Counsel's late-conceived objection lacks merit.

Lastly, counsel contends that "every federal Zoom jury trial to date has resulted in million dollar plus verdicts." (Marisseau Decl. ¶ 14.) This is factually incorrect. Of the four remote civil jury trials the undersigned has been conducted, this is the only one to result in a jury

verdict over $1 million. One case ended mid-trial with a settlement, one trial resulted in a jury verdict below $1 million, and the jury in the final cases reached a verdict in favor of the defendants. Counsel's argument also fails to explain why it would be fair to compare this case to any of the others that have been tried remotely or in-person. Nor can one conclude from the size of a verdict alone whether the jury's award was based on an "anti-defendant" bias. Indeed, an award of $1 million may well be a mere fraction of the requested damages. The inaccurate data counsel cites does not convince the Court that there is any structural bias against defendants in the remote jury process.

The Court finds no legal or factual merit in FedEx's argument in support of its claim that the remote jury process was improper or unfair. It is the Court's firm belief that the trial abided by the dictates of the Constitution and Rules 43 and 77, and it was explicitly permitted by General Order No. 20-15. Proceeding remotely enabled the parties to seek resolution to two-plus-year-old case that had already been through one mistrial. The jurors gave FedEx their devoted attention and they reached the verdict they did based on the evidence and testimony presented and the skill of counsel. The Court finds no basis on which to grant FedEx's Motion, which it DENIES the Motion on this issue.

7. Motion to Strike

Through his surreply, Goldstine asks the Court to strike: (1) Marisseau's declaration filed with the reply; (2) Elliot's declaration in support of the reply; (3) 49 pages of trial transcripts appended to Elliot's declaration (Exhibits M, O, R, S, and T to the Elliot Declaration); (4) 1.5 pages of FedEx's overlength reply; and (5) new arguments raised in the reply. The Court GRANTS in part and DENIES in part the motion. The Court also notes that FedEx filed a response to the surreply, which violates Local Rule 7(g)(4)'s commandment that "No response

shall be filed unless requested by the court." FedEx failed to follow this dictate and the Court STRIKES the response.

First, as explained above, although Marisseau's declaration could be stricken, the Court considered it in rejecting FedEx's motion. The Court DENIES the motion as to this declaration.

Second, the portions of trial transcripts appended to Elliot's declaration should have been raised to support the opening briefing. The Court therefore STRIKES exhibits M, O, R, S, and T to the Elliot Declaration, though not the declaration itself.

Third, FedEx's reply was overlength, running 3 pages over the limit. Goldstine has only asked the Court to strike the final 1.5 pages. While the Court could strike all overlength pages, it STRIKES only the 1.5 that Goldstine identifies. The Court GRANTS the motion on this issue.

Goldstine also asks the Court to strike new arguments and "all new material not in strict reply to Goldstine's arguments." (Surreply at 3.) But Goldstine fails to identify what the new arguments are and leaves the Court to guess. The requested relief is too vague to apply, and the Court DENIES it.

8. Attorneys' Fees

Goldstine asks the Court to award him his reasonable attorneys' fees incurred in opposing FedEx's Motion. The Court agrees and will award Goldstine his reasonable attorneys' fees. The Court will address the specific amount in its order on Goldstine's Motion for Attorneys' Fees (Dkt. No. 332).

CONCLUSION

The Court finds no merit in either post-trial motion advanced by the parties. The Court finds no basis to disturb the jury's verdict or to order a new trial. The Court therefore DENIES both motions. The matter of Goldstine's award of reasonable attorneys' fees for his opposition to

FedEx's Motion shall be resolved in a separate order on Goldstine's Motion for Attorneys' Fees (Dkt. No. 332).

The clerk is ordered to provide copies of this order to all counsel.

Dated March 11, 2021.

Marsha J. Pechman
United States District Judge